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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/837,353 | 04/17/2001 | David T. Pollock | ENDOV-55710 | 8883 |
| 24201 | 7590 | 05/18/2005 | EXAMINER | |
| FULWIDER PATTON LEE & UTECHT, LLP HOWARD HUGHES CENTER 6060 CENTER DRIVE TENTH FLOOR LOS ANGELES, CA 90045 | | | BUI, VY Q | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3731 | |
| DATE MAILED: 05/18/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/837,353

Applicant(s)

POLLOCK ET AL.

Examiner

Vy Q. Bui

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 3, 4, 7-20, 22, 23 and 25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2, 5-6, 21, 24, 26-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1-2, 5-6, 21 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by CHUTTER (6,454,795).

As to claims 1-2, 5-6, 21 and 24, CHUTTER (Figs. 10-12, for example) discloses longitudinal or curved members 12/14 having thickness greater than the width (Figs. 11-12), circumferential members/merge sections/connections 16 and opposed contact surfaces near the circumferential members/merge sections 16 having a length to maintain a space between the ends of adjacent longitudinal members as claimed. Notice that CHUTTER stent has substantially the same structural configuration as the stent in the present invention, therefore, CHUTTER stent also behaves the same as the device as claimed in the present invention. When CHUTTER stent is collapsed, the circumferential members 16 bend until the opposed contact surfaces come together and then continued deflection of the longitudinal members

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produces stress at the contact surfaces to thereby isolate the ends 16 of the longitudinal members 12/14 from stress due to forces associated with collapsing the endoprosthesis.

2. Claims 1-2, 5, 21 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by PINCHASIK et al. (6,454,795).

PINCHASIK-'795 (see Pinchasik's Fig. 3a, for example, in comparison to elected species shown in Fig. 6 of this present invention) discloses a stent as recited in the claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over CHUTTER (6,454,795) in view of PINCHASIK et al. (5,449,373).

As to claims 26-27, 29-30, CHUTTER discloses substantially all limitations as claimed, except for S-shaped connectors. PINCHASIK (Figs. 3A-3C) discloses S-shaped connectors 124 connecting adjacent closed diamond-shaped cells 108 for a differentially stretched and compressed curved configuration when PINCHASIK stent is flexed or for the stent to easily fit in a tortuous blood vessel (Fig. 3B). In view of PINCHASIK, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide S-shaped connectors to CHUTTER stent to provide flexibility to CHUTTER stent so as to make the stent to easily fit in a tortuous blood vessel.

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As to claims 28 and 31, CHUTTER and PINCHASIK disclose substantially all limitations as claimed, except for five adjacent rows of closed cells connected by S-shaped connectors. PINCHASIK (Figs. 3A-3C) shows three adjacent closed cells connected by S-shaped connectors 124. It would have been obvious to one of ordinary skill in the art at the time of the invention was made to provide five adjacent closed cells connected by S-shaped connectors 124 as claimed when a longer stent needed for a longer treatment site of a blood vessel.

Response to Amendment

The amendment under 37 CFR 1.132 filed 2/15/2005 is insufficient to overcome the rejection of claims as set forth in the last Office action because: the new limitation "the space between at least one pair of adjacent longitudinal members is maintained when the endoprosthesis is collapsed" does not add any structural limitation to the claimed invention to clearly define the present invention over the prior art of reference. The stent of the prior art of reference surely can be partially collapsed to have "a space between at least one pair of adjacent longitudinal members is maintained when the endoprosthesis is collapsed".

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period


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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vy Q. Bui whose telephone number is 571-272-4692. The examiner can normally be reached on Monday-Tuesday and Thursday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



05/12/2005

Vy Q. Bui
Primary Examiner
Art Unit 3731